IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1424 OF 2004

IN

SUIT NO.2361 OF 1994

Anant Chimanlal Bhatt .. Plaintiff

vs.

Vijayaben Chimanlal Bhatt
& Ors. .. Defendants.

M.L.Palan i/b. Bharat Vaishnawa, Advocate for the Plaintiff.

Mr.C.D.Patel, Advocate for the Defendant No1.

Mr. H.V.Chande for Defendant Nos.2, 5 & 6.

Mr. Sanjay Jain with Ashok Purohit i/b. M/s.Zehair & Co. for Defendant No.3.

Ms. Neeta V. Parikh with Mr. anil Dhond for Defendant No.4

Mr. M.M.Vashi i/b.M.P.Vashi & Associates for Defendant Nos.7 and 8.

CORAM : A.S.AGUIAR, J.
DATED : 17th February, 2005.

P.C.:

1. This Chamber Summons is taken out by the Plaintiffs for carrying out certain amendments to the plaint and proceeding in Suit No.2361 of 1994 as per schedule to the Chamber Summons. In his

Affidavit in Support of the Chamber Summons the Plaintiff has set out the necessity of carrying out the proposed amendments.

2. The Plaintiff has filed the abovesaid suit for a declaration that he has 1/7th share in the property being Plot No.9A and 9B, more particularly described in Exhibit A to the plaint together with the structure standing thereon, and for injunction and consequential reliefs.

3. According to the Plaintiff, he and the Defendants Nos.1 to 6 are the only heirs and legal representatives of Chimanlal B. Bhatt, the deceased, according to Hindu Law by which they are governed. The said Chimanlal Bhat, died intestate in Bombay on 1.6.1966. It is pointed out by the Plaintiffs that the Defendants Nos. 1 to 6 have given the property being Plot No.9B to a builder, Vasant Kotal, for development and sale on tenancy basis of some of the flats in the building Neelkant constructed on sub-divided Plot No.9B. Defendants 1 to 6 have converted the money received from the said builder to their own use.

Hence the suit.

4. According to the Petitioner, after filing of the suit certain events and development have taken place which need to be brought on record by way of amendment and that it will be in the interest of justice to to bring on record the said amendments. It is further pointed out by the Plaintiffs that after the suit was filed on 22.6.1994, the Defendants Nos.7 and 8 have entered into the suit flat on 1.7.1994 in violation of the order dated 23.6.1994 passed in Notice of Motion No.1525 of 1994, restraining the Defendants from creating any third party interest. Since the Defendants 7 and 8 are in occupation of the premises in violation of the orders of this Court, Plaintiffs took out proceeding for Appointment of Court Receiver resulting in the Defendants 7 and 8 being appointed agents of the Receiver. The matter was taken up to the Supreme Court which confirmed the said order. It is the case of the Plaintiff that the tenancy created in favour of Defendants Nos.7 and 8 is illegal and the tenancy Agreement entered into with defendant 5, 7 and 8

is Sham & Bogus. It is the contention of the Plaintiff that facts which have taken place subsequent to the filing of the suit need to be brought on record.

5. It is further pointed out by the Plaintiff that Defendant No.6 has wrongfully encroached on the ground floor flat in Building Neelkant which was occupied by an illegal occupant and possession was taken of the said ground floor flat which, according to the plaintiff should have been offered to him. This event transpired after the filing of the suit. Further, it is pointed out that in their Written statement dated 9.8.2004 the Defendants 2, 5 and 6 have suppressed the fact from the Court that Defendant No.6 in violation of the order dated 30.4.1998 has taken exclusiveoccupation of the entire ground floor flat No.1 in Nilkant Building, sometime in July 2003 and that he still continues in unauthorised and illegal occupation of the said ground floor. The Plaintiff apprehends that Defendant 1 to 6 may make an application for TDR in order to compromise or encumber the said plot No.9A and 9B in which

event the rights of the Plaintiff will be jeopardised.

6. It is submission of the Plaintiffs that he filed present suit in hurry apprehending immediate danger to his rights in the property and applied for ad-interim reliefs in a hurry and in the process he failed to make appropriate prayers for partition of the suit property according to the law for being given his share in the said property. The Plaintiff states that he is claiming his right to the 1/7th share on the basis of the Oral agreement with the Defendants 1 to 6, which the Defendants have failed to honour and therefore, the plaintiff has made an alternate prayer that in the event of draft agreement being held to be unenforceable he should be allowed to take the alternative plea of partition of the plot 9A and 9B and structures standing on the said plot as per law and for other urgent reliefs.

7. The sum and substance of the application is that since all these events have transpired after filing of suit, it has become necessary for

the plaintiff to carry out amendments to the plaint with a view to have his rights established by law. It is the submission of the learned Advocate for the Plaintiff that if the amendments are allowed they would in no way change the cause of action and no prejudice would be caused to the Defendants by allowing the said amendment.

8. The Defendants have filed their reply to the Chamber Summons. It is the contention of the Defendants that the Chamber Summons ought not to be allowed, since the plaintiff is seeking reliefs in the plaint which are barred by law of limitation . If a fresh suit is filed seeking additional prayer and relief as sought for in the Chamber Summons, the suit will be barred by the law of limitation. Hence on this count alone Chamber Summons is liable to be dismissed. It is further contended that the amendment sought for by the Plaintiff will change the cause of action and the nature of the suit. It is the contention of the Defendants that the so called developments referred to by the Plaintiff in his in support of the Chamber Summons, have not taken place after

filing of the suit and that the allegations made by the Plaintiff are an after thought made with ulterior motives as the facts now alleged were known to the Plaintiff prior to the filing of the suit.

9. The Defendant Nos.7 and 8 also have filed their affidavit in reply to the Chamber Summons. The Defendants 7 and 8 are the tenants who have been inducted in by the Defendants 1 to 6. It is the contention of the said Defendants that Plaintiff is trying to change the cause of action by asking for a declaration that the tenancy created by Defendant Nos. 1 to 6 in favour of Defendant Nos.7 and 8 is sham, illegal and bogus. That the suit as filed is for a declaration of the Plaintiffs 1/7th share in the suit property, and therefore a totally new cause and action is sought to be made out by the proposed amendments. It is further pointed out that hearing of the suit has been expedited by order dated 18.6.2004 and the present Chamber Summons is taken out by the Plaintiff purely with the intention of delaying the disposal of the said suit. It is further

pointed out that the Plaintiff became aware of the induction of Defendant Nos. 7 and 8 in the suit premises when the Defendants filed their Affidavit in support dated 5.7.1994 to the Chamber Summons No.638 of 1994 taken out by Defendants 7 and 8 in the suit claiming that the premises were let out to Defendant 7 and 8 in May 1994 i.e. prior to the filing of the suit. Despite this the Plaintiff did nothing till now and has belatedly taken out the present Chamber Summons which is dated 28th September 2004. It is pointed out that in the Affidavit in support of their Chamber Summons No.677 of 1994 the Defendants 7 & 8 had annexed all the documents supporting their claim of tenancy. The Plaintiff had taken inspection of all these documents while opposing the Chamber Summons, but took no steps to challenge the tenancy of Defendants 7 and 8 and therefore the present Chamber summons taken out after 10 years is time barred.

10. It is lastly submitted by the Defendant Nos.7 and 8 that the Plaintiffs can not be allowed to challenge the tenancy created in their favour

in the present suit as this Court has no jurisdiction to entertain the present suit which can only be decided by the Court of Small Causes i.e. Rent Court which has exclusive jurisdiction in the matter.

11. The Defendants have denied that Defendants 7 and 8 were inducted into the premises after filing of the suit. It is the contention of the Defendant Nos.7 and 8 that they came in possession of the flat No.2A on 11.5.1994 i.e. prior to the filing of the suit which was filed on 22.6.1994. However, it is the case of the Plaintiffs that the Defendants 7 and 8 were put in possession in July 1994 i.e. after ad-interim orders were passed restraining the Defendants from creating third party interest. This Court (Mrs.K.K.Baam, J.) by order dated 22.8.1995 had taken the view that Defendants 7 and 8 were put in possession prior to the interim order which was passed on 23.6.1994. It thus, appears that there is some controversy as to the exact point of time when Defendants 7 and 8 were inducted into the flat. Be that as it may, what is material for allowing the Chamber Summons

is to find out when Plaintiffs become aware of the induction of Defendant Nos. 7 and 8. According to the Plaintiff they became aware of induction of Defendants 7 and 8 in the suit premises only on 1.7.1994 when they found Defendant Nos.7 and 8 bringing their furniture and goods into the flat on 1.7.1994 i.e. after the date of filing of the suit. The Defendant Nos.7 and 8 took out Chamber Summons on 7.7.1994 for being impleaded as party Defendants which was allowed despite the opposition from the Plaintiffs who filed their reply to the Chamber Summons. Thereafter it appears that the Plaintiffs took no steps in the matter as the order for impleading Defendants 7 and 8 went right upto the Supreme Court, which by order dated 16.7.1996 upheld the Order of this Court continuing Defendant Nos.7 and 8 as agents of the receiver. All these events having transpired after the filing of the suit, it has become necessary for the Plaintiff to incorporate them the plaint with a view to adjudicate all the disputes in the said suit. It is the contention of the Defendants that the reliefs prayed for against Defendant Nos.7 and 8 can only be granted

by the Court of Small Causes i.e. Rent Court which has exclusive jurisdiction in this matter. However, since the Defendants 7 and 8 have got themselves impleaded as party Defendant, in the suit thereby submitting to the jurisdiction of this Court the issue as to the validity of the Agreement of tenancy allegedly created in favour of the Defendant Nos.7 and 8 needs to be decided by this Court. If this issue was not raised by the Plaintiff in this suit then it could possibly be argued that the Plaintiffs are barred by constructive res-judicata from agitating the matter before the Rent Court.

12. So far as the limitation is concerned, it is contended by the Defendants that since the Plaintiffs are seeking relief from this Court for quashing the agreement of tenancy as being a colourable document, the period of limitation would be three years under Article 113, and if a suit were filed for the said purpose the same would be barred by law of limitation. Although the prayers sought for in the amendment are for quashing the documents allegedly creating tenancy

in favour of Defendant Nos. 7 and 8 as being colourable documents, the ultimate relief as to the validity of the Tenancy can be granted only by the Rent Court which has exclusive jurisdiction in such matters. If the Plaintiff moved to the Rent Court for a declaration that the Defendants 7 and 8 are tress passers and not tenants, then Article 113 would not apply and therefore there would be no question of the reliefs sought by the plaintiff being barred by limitation.

13. Nodoubt some of the amendments sought for at clause e(6) and e(7) refer to the matters of which Plaintiff was aware when he filed the suit. However, in view of the fact that the plaintiff is now seeking amendments to include the prayer for partition of the property, granting of these prayers is consequential.

14. The learned Advocate for the Defendant No.3 has submitted that the prayer for partition is not consequential to the prayer for declaration and that a suit for partition if filed today would be barred as it would be beyond the period of

three years which is the period of limitation under Article 113 of the Limitation Act. In support he relies upon the judgment reported in AIR 1996 SC page 642 paragraphs 4 and 5. The question of limitation applying to the suit for partition in the present suit is inconsequential as the prayer for partition in the present is asked for in the alternative.

15. It must be remembered that as far as possible all disputes must be tried in one forum and the Plaintiff should not be compelled to file separate suits in different fora and obtain piecemeal reliefs. If the amendment is granted, no prejudice will be caused to the Defendants. Permitting the amendments would not automatically result in granting the reliefs sought for. The Plaintiff would require to substantiate his contention in the suit by leading evidence. Whether Defendant Nos.7 and 8 were inducted into the premises in violation of the ad-interim orders granted by this Court or not will have to be decided at the final trial of the suit and after evidence is led.

16. Dealing with the Courts discretion to allow amendment of the pleadings the Supreme Court in AIR 1969 S.C.1267 held as follows:

> "The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.
>
> Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been proposed amendment, the

amendment may be allowed if it can be made without injustice to the other side."

17. In the circumstance, I am inclined to allow the application.

. Chamber Summons accordingly made absolute in terms of prayer clause (a). No order as to costs.

. Chamber Summons disposed of.

(A.S.AGUIAR, J.)